

A guide to the Mental Capacity Act Deprivation of Liberty Safeguards and your rights

Adults' Services

Introduction

'Mental capacity' means the ability to make your own decisions.

'Lacking mental capacity' means not being able to make decisions for yourself.

'Liberty' means being free to do the things you want to do, when you want to do them.

The Mental Capacity Act Deprivation of Liberty Safeguards (DoLS) scheme was introduced to make sure that no one in a hospital or care home is deprived of their liberty (has their liberty taken away from them) without good reason. If you are deprived of your liberty in a hospital or care home, you will receive the care you need while continuing to have certain legal rights.

If you lack the mental capacity to make certain decisions, you need extra protection. You should be treated or cared for in a way that means you are safe and free to do the things you want to do.

DoLS will only take away your liberty if it is in your best interests.

You have been given this booklet because health and social care professionals have been asked to carry out some assessments under DoLS. This booklet explains more about DoLS and what will happen next.

What is deprivation of liberty?

Being deprived of your liberty in a care home or hospital means that:

- you cannot decide for yourself whether to stay in the hospital or care home;
- staff in the care home or hospital have control over decisions in your life; and
- you cannot leave the care home or hospital without permission.

If you are being cared for and treated in this way you must have a special agreement, called a DoLS authorisation, to keep you safe.

You are eligible for DoLS if you:

- live in England or Wales;
- are aged 18 or over;
- have a mental disorder or a learning disability;
- live in a care home, or are staying in hospital, and lack the mental capacity to agree to be there; and
- need to get treatment or care that will protect you from harm.

This booklet explains how we will make sure you have a DoLS authorisation to help keep you safe. It also explains your rights under DoLS.

Who are the managing authority and what do they do?

There is a code of practice that applies to DoLS. This is a book of rules that explains what should happen and tells the people involved in your care what to do.

The code of practice says that the hospital or care home that is caring for or treating you is called the 'managing authority'. If the managing authority thinks you need to be deprived of your liberty, it must make sure this is allowed under DoLS.

Who are the supervisory body and what do they do?

We are the supervisory body in West Sussex. The managing authority must write to us to tell us that you need a DoLS authorisation.

The code of practice says we must decide whether you need a DoLS authorisation. We will do this by arranging for at least two people to check how you are being treated or cared for. These people are called DoLS assessors.

One of the assessors will be a doctor. They will decide whether you are able to decide for yourself whether to stay in the care home or hospital. They will meet with you and then give us a report.

The second assessor is called a best interests assessor (BIA). The BIA is a professional who has carried out specialist training to do this role. The BIA must be independent, which means that someone who is already involved in your care can't be the BIA.

The BIA will discuss your needs with anyone who has a valid power of attorney (is legally allowed to make specific decisions for you and act on your behalf).

The BIA will meet with you to find out your views and feelings about the care arrangements. They must also speak to any family members and friends who are closely involved in your life.

If the Court of Protection has authorised someone to act on your behalf, the BIA will also work closely with that person to make sure any decisions that are made about your care and support are in your best interests.

A 'best interests' decision can only be made for you if you are lacking the mental capacity to decide for yourself whether to stay in the hospital or care home.

The BIA will write a report to tell us if a DoLS authorisation is needed and, if so, how long it should apply for. Sometimes the BIA's report will include 'conditions', which are actions that the managing authority must carry out.

What will happen after the BIA's report?

If the BIA's report says that you are being deprived of your liberty and that this is in your best interests, we will arrange for one of our managers to review the report and confirm the DoLS authorisation needed for you. We will also write to the hospital or care home to give them details of the DoLS authorisation, and staff involved in your care will explain the arrangements to you.

The DoLS authorisation is to make sure you are safe. The authorisation should be in place for as short a time as possible, and never for longer than one year.

You will get a copy of the DoLS authorisation.

What are my rights if I have a DoLS authorisation?

In order for a DoLS authorisation to be put in place, we must consider that, under the code of practice, you need to be in a care home or hospital for the following reasons.

- You lack the mental capacity to make your own decision about staying in a care home or hospital to receive care or treatment.
- You have a mental disorder or a learning disability.
- You have not already made a decision to refuse the treatment you are receiving (if relevant) and there is no personal welfare lasting power of attorney or court-appointed deputy (someone appointed by the Court of Protection to act on your behalf) who objects to you being in the care home or hospital.
- You need restrictions to be in place so that you get the care or treatment you need. These restrictions are in your best interests, and they are necessary to prevent harm to you. The restrictions in place are proportionate to the level of harm they aim to prevent.
- It is in your best interests to be living in the care home or hospital at the moment.

You have the following rights if you have a DoLS authorisation

- You can have a representative to support you. Your representative will explain to you all about the DoLS authorisation. You can choose your representative before a DoLS authorisation is needed, and it could be a member of your family or a friend. If you haven't already chosen a representative when the authorisation is put in place, we will arrange one for you. Your representative will visit you and check you are looked after in a way that means you are safe. They will be named in the authorisation.
- You can ask for a review. If you are not happy about the DoLS authorisation, or you think the BIA got some things wrong in their report, you can ask for a review to make sure you are being treated in the right way.
- You can ask us about any conditions in the DoLS authorisation. These are things the care home or hospital have to do or change. If you do not think the care home or hospital is meeting the conditions, you should tell the care home or hospital, or your representative. You can also tell us, or you can ask the Court of Protection to help you.
- You can ask for a special kind of advocate. If you or your representative needs help to challenge the decision to put the DoLS authorisation in place, you can ask for an independent mental capacity advocate to help with this.
- Your representative or the hospital or care home can also ask for a review. They may want to do this because something has changed since the assessments were carried out.
- If you or your representative still disagrees about you being deprived of your liberty, you can ask the Court of Protection to decide whether or not this should happen. You will not usually have to pay for this. An independent mental capacity advocate can also help you.

- You can contact our Deprivation of Liberty Safeguards Team (see the contact details below). We will always listen to your point of view and sort out any disagreement informally if we can.

Deprivation of Liberty Safeguards (DoLS) Team

Phone: 0330 222 3691. Calls using Relay UK: 18001 01243 642121 (for deaf callers from a textphone or the NGT Lite app downloaded onto a computer, tablet or smartphone).

Email: dols@westsussex.gov.uk.

What if I need to speak to a solicitor?

There are specialist solicitors who can give you advice on mental capacity and DoLS. You can get information about local solicitors at local branches of Citizens Advice in England. Find out more at citizensadvice.org.uk or call 0800 144 8848 (Monday to Friday, 9am to 5pm). The number for calls using Relay UK is 18001 0800 144 8848. (This service allows deaf callers to make phone calls from a textphone or the NGT Lite app downloaded onto a computer, tablet or smartphone.)

Or you can use the Law Society's 'Find a Solicitor' scheme website. Find out more on the [Find a Solicitor page](#) of the Law Society website, or call 020 7320 5650 (Monday to Friday, 9am to 5.30pm).

Civil Legal Advice is a type of legal help that is available to individuals and families who cannot afford to hire a solicitor. It can help you with a variety of issues, including family law, housing law, benefits law, and more. Find out more on [the Community Legal Advice website](#).

Adults' CarePoint

Phone: **01243 642121**. Calls using Relay UK: **18001 01243 642121** (for deaf callers from a textphone or the NGT Lite app downloaded onto a computer, tablet or smartphone).

Website: visit [the How to get adult social care support page](#) of the West Sussex County Council website.

Write to: Adults' CarePoint, County Hall, Chichester, West Sussex, PO19 1RG.

Other formats

If you would like more copies of this booklet or need this information in another format, for example, in large print or Easy Read, on audio CD or in a different language, please contact us. Please see our contact details above.

Current versions of all our public information are available on [the Adults' social care publications page](#) on the West Sussex County Council websites.

We are committed to equality, celebrating diversity and preventing unlawful discrimination. We value the people we support, our staff and partners for who they are, and we actively promote fairness and respect for all. We also expect our staff to be treated politely and with respect by the people we support.